Supreme Court, U.S.
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No. 01-896

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY and
CITIBANK (SOUTH DAKOTA), N.A.,

Petitioners,

v.

JOHN B. McCAULEY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should overrule its well-understood holdings of *Snyder* and *Zahn* and permit courts to aggregate class members' "separate and distinct" claims for injunctive relief when determining if the $75,000 amount-in-controversy requirement is met.

2. Whether this Court should review the uniform rule in the circuit courts of appeal that class members' "separate and distinct" punitive damages claims may not be aggregated to satisfy the amount-in-controversy requirement.

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STATEMENT OF THE CASE

This case concerns a class action involving parties of different states and "separate and distinct" claims of individuals brought under state law. In *Snyder v. Harris*, 394 U.S. 332 (1969), and *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), this Court held that Rule 23 did not alter the long-standing traditional rule that "separate and distinct claims of two or more plaintiffs cannot be aggregated in order to satisfy the jurisdictional amount requirement" of the diversity statute. 394 U.S. at 335; 414 U.S. at 294. In contrast, where "several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest," their claims may be aggregated to reach the jurisdictional threshold. *Zahn*, 414 U.S. at 294.

In this case, there is no dispute that plaintiffs' underlying claims are "separate and distinct," nor is there any dispute that this case was brought as a class action and is thus governed by the nonaggregation principle confirmed by this Court in *Snyder* and *Zahn*. In addition to compensatory damages, however, plaintiffs asserted claims for injunctive relief and punitive damages. Admittedly, this Court has not spoken conclusively about how to value the amount-in-controversy in the class action context where, like here, injunctive relief is requested as the surrogate through which the "separate and distinct" damage claims can be satisfied. Yet, there is no doubt that "[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977) (citing cases dating back to 1907). And, application of either the "plaintiff's viewpoint" rule or the "either viewpoint" rule to the facts of this case reaches

the same result: the value of the "object of the litigation" is less than $75,000. In fact, the district court found that even under the "either viewpoint" approach, Petitioners "failed to show that the value of the injunction enforced as to any one cardholder would exceed $75,000." Pet. App. at 29a. In a different case, and under a different set of facts, the need for clarification of these long-standing rules and their interrelationship might manifest. But, on these facts, review is not warranted.

Similarly, this Court has not conclusively spoken to the method by which the amount-in-controversy requirement of the diversity statute is calculated when plaintiffs allege punitive damages. However, unlike the injunctive relief question, there simply is no divergence of views among the lower courts. Indeed, the circuit courts of appeal uniformly agree that any potential punitive damages award must be divided *pro rata* among class plaintiffs and may not be aggregated to determine the amount-in-controversy. Until the diversity statute is amended or a novel interpretation of the statute is espoused by a single circuit court of appeal that conflicts with the existing uniform interpretation, there is no need for further commentary by this Court.

1. The district court dismissed the consolidated complaint for lack of jurisdiction.

As Petitioners note, this case arises out the termination of the Ford Motor Co./Citibank rebate program. In response to the termination of the program, Respondents filed six class actions between January 9, 1998, and June 12, 1998, alleging only state claims in the state courts of Washington, Oregon, California, Illinois, Alabama, and New York. The complaints generally alleged misrepresentations on the part of the

Petitioners and that the rebate program was wrongfully terminated. Pet. App. at 23a.

Asserting diversity jurisdiction, Petitioners removed each case to federal court, and the Judicial Panel on Multidistrict Litigation transferred the cases for consolidated pretrial proceedings to the Western District of Washington. *Id.* Respondents then filed a consolidated class complaint, pleading diversity jurisdiction, on behalf of the estimated six million class members. *Id.* at 24a. Among other things, the consolidated complaint sought compensatory and punitive damages, and an injunction reinstating the wrongfully terminated rebate program. *Id.* at 4a.

After class certification discovery, and following an initial hearing on class certification, *sua sponte* the district court issued an order to show cause why the action should not be dismissed for lack of jurisdiction. *Id.* at 24a. The district court's show cause order was prompted by arguments raised in Petitioners' supplemental brief opposing class certification. *Id.* & n.2.

In response to the show cause order, Petitioners argued for diversity jurisdiction, while Respondents suggested that jurisdiction was "questionable." *Id.* at 25a. Even though no plaintiff or putative class member could possibly have a claim greater than $3,500, Petitioners contended that the jurisdictional amount-in-controversy was met for three reasons: (i) plaintiffs requested an aggregate award of damages "without reference to the damages incurred by any individual cardholder", *id.* at 27a; (ii) the cost of compliance with the injunctive relief requested would be "significantly in excess of $75,000", *id.* at 28a; and (iii) punitive damages

were prayed for and should be aggregated to determine whether the requisite amount-in-controversy was met, *id.* at 29a.[1] The district court rejected each one of Petitioners' arguments and dismissed the consolidated complaint for lack of jurisdiction.

First, the district court rejected Petitioners' "aggregate award" argument because the district court found that the action involved "separate and distinct" claims, and thus under this Court's holdings of *Snyder* and *Zahn*, such claims could not be aggregated to meet the amount-in-controversy requirement. *Id.* at 27a-28a.

Second, the district court rejected Petitioners' argument that the jurisdictional minimum was met by the cost of complying with the injunctive relief requested. The district court did so for two reasons: (i) the cost to comply with an injunction could not serve to satisfy the amount-in-controversy requirement "where, as here, the nature and value of the injunctive relief sought is identical to the nature and value of the monetary relief sought," as to do so would run contrary to the "principles of *Snyder* and *Zahn*," *id.* at 28a; and (ii) even under the "either viewpoint" rule, the district court found that Petitioners "failed to show that the value of the injunction enforced *as to any one cardholder* would exceed $75,000," *id.* at 29a (emphasis added). Thus, Petitioners failed to carry their burden of proving that it would cost more than $75,000 to reinstitute the rebate program even for one plaintiff.

1. Petitioners did *not* argue to the district court that "any plaintiff's recovery of punitive plus compensatory damages could reach $75,000 (at that level, a recovery for six million class members would be the absurd total of $450 billion)." *Id.* at 29a.

Thirdly, and lastly, the district court rejected Petitioners' contention that a prayer for punitive damages requires aggregation. Again, relying on *Snyder* and *Zahn*, the district court ruled that "to permit the aggregation of punitive damages, when actual damages could not be aggregated, 'would eviscerate the holdings of *Snyder* and *Zahn* and would run counter to the strict construction of the amount-in-controversy requirement those cases mandate.'" *Id.* at 30a (quoting *Gilman v. BHC Sec.*, 104 F.3d 1418, 1431 (2d Cir. 1997)). The district court further found that under New York and South Dakota punitive damages law, the minimum threshold was not met because plaintiffs do not have a "common and undivided interest" in the punitive damages, and thus such damages could not be aggregated without running afoul of *Snyder* and *Zahn*. The district court found absurd the assertion that a disaggregated (i.e., *pro rata*) punitive damage award could reach the requisite $75,000 per class member, noting this would require an award of $450 billion. *Id.* at 29a.

2. The Ninth Circuit affirmed the dismissal of the consolidated complaint for lack of jurisdiction.[2]

a. The panel first addressed Petitioners' contention that the cost of compliance with the requested injunctive relief carries them over the jurisdictional threshold. After reviewing the history of applying the "either viewpoint" rule to class actions,[3] the court started its analysis by correctly noting that

2. On appeal, Petitioners did not contend that plaintiffs' damages claims could be aggregated to meet the amount-in-controversy requirement, or that plaintiffs' claims were "common and undivided" as opposed to "separate and distinct." Pet. App. at 6a-7a.

3. The Ninth Circuit has rejected the "plaintiff viewpoint" rule when determining the value of non-class claims for purposes of (Cont'd)

in actions seeking declaratory or injunctive relief, the amount in controversy is measured by the value of the object of the litigation. *Id.* at 9a (citing *Snow v. Ford Motor Co.*, 561 F.2d 787, 790 (9th Cir. 1977)); *Hunt*, 432 U.S. at 347. Naturally, in valuing the object of the litigation, a court must first determine which viewpoint to use: either (i) value it from the plaintiff's perspective or (ii) use the defendant's cost of complying with the requested relief. According to the panel, and relying on this Court's holding in *Snyder*, only if plaintiffs "unite to enforce a single title or right in which they have a common and undivided interest" may a court "look to the 'either viewpoint' rule to determine jurisdiction." Pet. App. at 9a. Otherwise, according to the panel, the "test is the cost to the defendants of an injunction running in favor of one plaintiff." *Id.* (citing *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997) *cert. denied*, 522 U.S. 1153 (1998)).

Here, just like the district court, the panel first held that plaintiffs do not possess a "common and undivided" interest in the injunctive relief. *Id.* at 9a-10a. The court emphasized the "right [to injunctive relief] is distinct to each plaintiff, is based on his or her individual contractual relationship with Ford and Citibank, and is worth no more than $3,500." *Id.* at 11a. In other words, the court found that the equitable relief sought in this case, and under these facts, was merely a "means through which the individual claims may be satisfied," and thus the object of the litigation could be valued at no more than $3,500 per plaintiff. *Id.* at 12a.

(Cont'd)
determining whether the amount-in-controversy requirement is satisfied. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 405 n.6 (9th Cir. 1996) (en banc); *Ridder Bros. v. Blethen*, 142 F.2d 395, 399 (9th Cir. 1944).

Following the finding that the injunctive relief claims are "separate and distinct" and valued at no more than $3,500 per plaintiff, the panel correctly proceeded to test whether the cost of an injunction running in favor of one plaintiff would exceed $75,000. Departing some from the disjunctive rationale of the district court,[4] the panel concluded that, as a matter of law, court-ordered administrative compliance costs incurred by the defendant could not satisfy the amount-in-controversy requirement in this case. The court reasoned that, if permitted, "every case, however trivial, [brought] against a large company would cross the [jurisdictional] threshold." *Id.* at 12a.

b. The panel also rejected Petitioners' contention that the prayer for punitive damages satisfied the amount-in-controversy requirement because, according to Petitioners, such damages are a "single collective right in which plaintiffs have a common and undivided interest." *Id.* at 15a. Like the underlying claims, the court emphasized that plaintiffs, prior to the litigation, failed to share or jointly hold a single title or right (i.e., plaintiffs did not have a "common and undivided interest" in punitive damages), and that therefore, in light of *Snyder* and *Zahn*, such damages could not be aggregated. Without aggregation, the court upheld the district court's finding that jurisdictional amount could not be and was not met. *Id.* at 17a.

4. In addition to concluding that the injunctive relief was the means through which plaintiffs sought to satisfy their individual claims, the district court also found that Petitioners had failed to prove that the amount-in-controversy was satisfied even for one plaintiff. Pet. App. at 29a.

REASONS FOR DENYING THE WRIT

I. CERTIORARI IS INAPPROPRIATE BECAUSE THERE IS NO TRUE CONFLICT BETWEEN THE CIRUITS IN THE CONTEXT OF THIS CLASS ACTION WHEN INTERPRETING THE LONG-STANDING RULES THAT GOVERN THE DETERMINATION OF THE AMOUNT-IN-CONTROVERSY FOR INJUNCTIVE RELIEF UNDER 28 U.S.C. § 1332

A. The Rule for Valuing Injunctive Relief to Determine Whether the Amount-In-Controversy Requirement Under the Diversity Statute Is Well-Settled

Citing cases dating as far back as 1907, this Court conclusively pronounced that "[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt*, 432 U.S. at 347. Petitioners do not contest the validity of this requirement. Instead, in an attempt to convince this Court that there are conflicting or confusing rules of law pertaining to valuing injunctive relief requested by a class or putative class, Petitioners argue that the "plaintiff's viewpoint" rule and the "either viewpoint" rule conflict when valuing the object of *this* litigation. Petitioners' are wrong.

B. Requests for Injunctive Relief Made by a Class Do Not Invariably Create a Conflict of Opinion within the Circuit Courts of Appeal. Indeed, this Litigation Exemplifies the Harmony among the Different Viewpoint Approaches to Valuing Injunctive Relief

Admittedly, the circuit courts of appeal have adopted different rules for determining from which viewpoint the court should value an injunction, the so-called "object of the litigation," in the class action context. The Third, Fifth, Eighth, Tenth, and Eleventh Circuits look to the value to the plaintiff of the relief requested; this is the so-called "plaintiff's viewpoint" rule. *See Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1050 (3d Cir.) *cert. denied*, 510 U.S. 964 (1993); *Alfonso v. Hillsborough County Aviation Authority*, 308 F.2d 724, 726-27 (5th Cir. 1962); *Massachusetts State Pharmaceutical Asso. v. Federal Prescription Serv., Inc.*, 431 F.2d 130, 132 n.1 (8th Cir. 1970); *Lonnquist v. J. C. Penney Co.*, 421 F.2d 597, 599 (10th Cir. 1970); *Ericsson GE Mobile Communs. v. Motorola Communs. & Elecs.*, 120 F.3d 216, 219-20 (11th Cir. 1997). These circuit courts value the object of the litigation in this manner principally because, the panels' reason, to consider the "total detriment" to the defendant of compliance with an injunction entered against a defendant in cases involving "separate and distinct" claims would run afoul of the nonaggregation principle espoused by this Court in *Snyder* and *Zahn*. *See, e.g.*, *Federal Prescription*, 431 F.2d at 132 n.1 ("In a class action where the aggregate amount of damages to the class exceeds $10,000, the value of the thing to be accomplished by the action, (judgment for the aggregate amount) as to the defendant exceeds the jurisdictional

amount. . . . The Court in *Snyder* does not recognize the presence of the jurisdictional amount in that situation.") (citation omitted).

The Seventh and Tenth Circuits have adopted the "either viewpoint" approach in which the cost of the injunction to the defendant can, in the proper circumstances, establish the minimum amount-in-controversy in a class action. *See Brand Name*, 123 F.3d at 609-10 (7th Cir.); *Justice v. Atchison, T. & S.F.R. Co.*, 927 F.2d 503, 505 (10th Cir. 1991).[5] To avoid running afoul of the aggregation prohibition of *Snyder* and *Zahn*, courts that use the "either viewpoint" rule in the class action context value the object of the litigation by testing the cost to the defendant of an injunction running in favor of *one* plaintiff. *See Brand Name*, 123 F.3d at 610. Thus, even the "either viewpoint" courts interpret the amount-in-controversy requirement as being similarly impacted by the nonaggregation principle applicable to class actions.

5. Petitioners cite several cases suggesting that additional circuit courts of appeal have decided which viewpoint rule to employ in the class action context when determining the value of a requested injunction. Several of the cases that Petitioners cite, however, are not class actions. *See Kheel v. Port of New York Auth.*, 457 F.2d 46 (2d Cir.) *cert. denied*, 409 U.S. 983 (1972); *Smith v. Washington*, 593 F.2d 1097 (D.C. Cir. 1978); *Gov't Employees Ins. Co. v. Lally*, 327 F.2d 568, 569 (4th Cir. 1964); *Ridder Bros*, 142 F.2d 395 (9th Cir. 1964).

Furthermore, the First Circuit, contrary to Petitioners' argument, does not appear to have decided the specific issue. In *Berman v. Narragansett Racing Ass'n*, 414 F.2d 311, 314 (1st Cir. 1969) *cert. denied*, 396 U.S. 1037 (1970), the court found that class plaintiffs had a "common and undivided" interest. *Id.* at 315. Thus, the nonaggregation principle articulated in *Snyder* and *Zahn* does not apply.

Here, the Ninth Circuit, consistent with its opinion in *Snow v. Ford Motor Co.*, 561 F.2d 787, 790 (9th Cir. 1977), refused to extend application of the "either viewpoint" rule to class actions because of the nonaggregation principle established by this Court. Pet. App. at 8a-9a. However, the panel nevertheless tested the amount-in-controversy in a manner consistent with the "either viewpoint" rule when it determined that the "test is the cost to the defendants of an injunction running in favor of one plaintiff." *Id.* at 9a (citing *Brand Name*, 123 F.3d at 610). In so doing, the panel avoided any conflict between the two viewpoint approaches and complied with the traditional and historic test for determining the value of the "object of the litigation." Similarly, the seemingly conflicting opinions of the Tenth Circuit, which are cited above, are understood as presenting no conflicting application of the rules of law in interpreting the amount-in-controversy requirement for an injunction sought by a class.

Petitioners infer that such an approach, and the one taken by the panel below, is a means of harmonizing the "either viewpoint" rule with the nonaggregation principle where the underlying claims are "separate and distinct." Pet. at 11. Indeed, in *Brand Name*, the Seventh Circuit emphasized that the amount-in-controversy test cannot be the total detriment to the defendant of an injunction entered on behalf of the class, for that would run afoul of the nonaggregation principle articulated in *Snyder* and *Zahn*. *Brand Name*, 123 F.3d at 609-10.

Thus, there is, in actuality, no conflict between the "either viewpoint" rule and the "plaintiff viewpoint" rule in the class action context. Every court of appeals acknowledges the limitation imposed by the nonaggregation principle of *Snyder* and *Zahn*, and every circuit court values the object of the

litigation without aggregating "separate and distinct" claims. And, that is exactly what occurred in this case. Both the district court and the court of appeals determined that the value of the "separate and distinct" right asserted (i.e., the right to accrue rebates) could be no more than $3,500, which is well below the jurisdictional threshold. Pet. App. at 11a. Thus, the jurisdictional threshold could not be reached without aggregation.

C. Neither the District Court or the Ninth Circuit Erred in Determining that Petitioners Failed to Prove the Requisite Amount-In-Controversy

To be sure, there is a difference between those courts that permit consideration of the cost of an injunction to a defendant and those that do not. Under a different set of circumstances, such differences might merit consideration by this Court, as Petitioners correctly note there is some confusion among the lower courts and between legal scholars about this issue. However, this case is not the proper vehicle to resolve this issue because the issue was correctly decided below under the "either viewpoint" rule.

As explained above, the district court found that Petitioners failed to meet their burden of proving that the "value of the injunction enforced as to any one cardholder would exceed $75,000." Pet. App. at 29a. This finding conclusively forecloses the error Petitioners' contend occurred because a contrary finding is necessary to assert jurisdiction under the "either viewpoint" rule.

Furthermore, and perhaps more significantly, no court under any approach has accepted the argument that the ministerial business costs of compliance with an injunction

satisfy the amount-in-controversy requirement.[6] Just like the panel below, Judge Posner, in *Brand Name*, specifically emphasized that if such an argument were accepted, "then every case, however trivial, against a large company would cross the threshold." 123 F.3d at 610. Here, Petitioners argued that the business costs of reinstituting the rebate program, even for one plaintiff, exceeded the $75,000 threshold. The district court found that Petitioners failed to prove this jurisdictional fact. Pet. App. at 29a. Nevertheless, these business costs are simply not the kind of business costs that courts would consider even under the "either viewpoint" approach. Pre-litigation, the Petitioners had the rebate program in place, the business apparatus had been designed, employees had been hired, and the rebate plan was operational. The injunction requested, at the time the suit was filed, was simply to keep the business practice going as

6. Petitioners erroneously suggest that this Court has approved the use of defendant's "compliance costs" when calculating the value of the object of the litigation. Pet. at 8 n.2 (citing *Hunt*). In *Hunt* the compliance costs properly considered were the cost to *plaintiffs in complying with a statute they sought to enjoin*. *See Hunt*, 432 U.S. at 347 ("The value of that right is measured by the losses that will follow from the statute's enforcement."). Indeed, these compliance costs were costs imposed on plaintiffs and required by them to change their business practices to comply with the allegedly unlawful statute. Such costs are vastly different than costs imposed on a defendant business that is ordered to continue an existing business practice by operation of law. Moreover, no case decided by this Court has approved the use of such "compliance costs" in valuing the object of the litigation. In fact, no case decided by this Court has considered it proper to value an injunction from the defendant's perspective when determining whether the "object of the litigation" exceeds the jurisdictional prerequisite. *See, e.g.*, *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (refusing to discuss the defendant's perspective in a cases seeking injunctive relief); *Scott v. Frazier*, 253 U.S. 243 (1920) (same).

a means to compensate plaintiffs for the damages suffered. It was not as though the injunction requested Ford or Citibank to design a new program or create a new product and thus alter their business practices. *See, e.g., In re Microsoft Corp. Antitrust Litig.*, 127 F. Supp.2d 702, 718-19 (D. Md. 2001) (noting the value of the litigation (i.e., creating a Windows operating system untied from the Internet Explorer) would cost more than $58 million to create). The injunction requested would simply have maintained the business status quo until each plaintiff had been paid up to $3,500 in value.

Furthermore, the primary object of this litigation, as is uncontested, is for plaintiffs to receive the benefit of the bargain of the rebate program that Ford and Citibank unlawfully terminated. That right was valued at $3,500 — at most — for any one plaintiff. Pet. App. at 11a-12a. Thus, because the object of the litigation was valued at no more than $3,500 per plaintiff, in accordance with *Hunt* and the nonaggregation principle applicable to class actions, this case does not meet the jurisdictional threshold on the facts.

D. The Doctrine of *Stare Decisis* Militates Against Granting Petitioners' Request

As this Court has stated, *stare decisis* is "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). "Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-173 (1989).

Although unstated, what Petitioners truly request is for this Court to revisit the holdings of *Snyder* and *Zahn* and the scope and reach of the diversity statute in the class action context to value the "object of the litigation" differently. The relevant decisions of this Court, however, have stood for decades and, more importantly, were the products of over 100 years of this Court's jurisprudence.[7] Furthermore, other than increasing the amount-in-controversy threshold to establishing federal jurisdiction, the relevant text of section 1332 and the federal court's diversity jurisdiction has remained essentially unchanged by Congress since the statute was originally enacted.

It is settled that "[t]he policy of the [diversity] statute calls for its strict construction. . . . Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Healy v. Ratta*, 292 U.S. 263, 270 (1934). Without any intervening congressional amendment of the diversity statute, it would be inappropriate for this Court to revisit the holdings where "Congress, with complete understanding of how the courts had construed the statute, had not changed the governing language and down through the years had continued to specify and had progressively increased the jurisdictional amount necessary for instituting suit in the federal courts." *Zahn*, 414 U.S. at 300; *see also id.* at 301 (same).

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7. *See, e.g., Zahn*, 414 U.S. at 295; *Snyder*, 394 U.S. at 336; *Rogers v. Hennepin County*, 239 U.S. 621, 622 (1916); *Wheless v. City of St. Louis*, 180 U.S. 379, 382 (1901); *Oliver v. Alexander*, 31 U.S. (6 Pet.) 143, 147-48 (1832).

Further, Petitioners' arguments concerning the merits of the reach of diversity jurisdiction in class actions (*see* Pet. at 14-19), no matter how reasonable or sound, are simply foreclosed by the Court's rulings interpreting the language of the diversity statute as applied to class actions. Indeed, if Congress chooses to, it can and should amend section 1332 to correct any perceived error. *See, e.g.*, *Conroy v. Aniskoff*, 507 U.S. 511, 528 (1993) (Scalia, J., concurring) ("The language of the statute is entirely clear, and if that is not what Congress meant then Congress has made a mistake and Congress will have to correct it."). In this regard, it is significant to note that S. 1712 and H.R. 2341 (the "Class Action Fairness Act of 2001") are presently pending before Congress. These bills seek to amend 28 U.S.C. § 1332 to federalize class actions and modify the amount-in-controversy requirements. In fact, since at least 1998, Congress has been attempting to amend the diversity statute as applied to class actions because several legislators perceive, just as Petitioners do, the need to amend the diversity statute to undo the effect the of this Court's holdings in *Snyder* and *Zahn* and the historic understanding of section 1332's amount-in-controversy requirement.[8] If enacted, the Class Action Fairness Act would establish the new rules of federal jurisdiction in class actions that Petitioners ask this Court to write.[9] The prudent course for this Court would be

8. A similar bill, each one entitled "Class Action Fairness Act of [Year]", has been introduced in the House and Senate every year since 1998.

9. In relevant part, the Act would modify section 1332 to read:

> (d) (2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value
>
> (Cont'd)

to await congressional action before uprooting its long-standing decisions that have interpreted the diversity statute.

(Cont'd)

> of $2,000,000, exclusive of interest and costs, and is a class action in which —
>
> (A) any member of a class of plaintiffs is a citizen of a State different from any defendant;
>
> . . .
>
> (d) (4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interests and costs.

Resp. App. at 16a-17a; 38a-39a.

The Act would also amend the removal statute to include a provision to make most orders remanding a class action to state court immediately appealable. Thus, contrary to Petitioners' contention, there would be ample opportunity for this Court and other courts to interpret "these important issues" as the law develops and percolates throughout the judiciary. *See* Resp. App. at 20a-21a; 42a-43a.

II. THERE IS NO CONFLICT BETWEEN OR CONFUSION AMONG THE CIRCUITS ON THE ROLE OF PUNITIVE DAMAGES IN DETERMINING WHETHER SUCH DAMAGES SATISFY THE AMOUNT-IN-CONTROVERSY REQUIREMENT UNDER THE DIVERSITY STATUTE IN CLASS ACTIONS

In an attempt to convince the Court to grant the writ, Petitioners argue that there is confusion in the lower courts and an alleged conflict between the court of appeals on the issue of aggregation of punitive damages in the class action context. In support of this contention, Petitioners erroneously assert that a trail of decisions within the Fifth Circuit conflict both within the circuit and without, and have fostered confusion among the lower courts. The principal cases relied on by Petitioners are *Lindsey v. Alabama Tel. Co.*, 576 F.2d 593 (5th Cir. 1978); *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995); *Ard v. Transcontinental Gas Pipe Line Corp.*, 138 F.3d 596 (5th Cir. 1998). However, as is explained below, Petitioners' argument is flawed. All circuit courts of appeal unanimously agree that punitive damages sought by a class may not be aggregated to satisfy the amount-in-controversy requirement.

The issue resolved in *Allen*,[10] the case that is seemingly the lynchpin to Petitioners' argument, was whether aggregation of punitive damages was permissible under Mississippi law in a case involving multiple plaintiffs, *but which was not a class action*. Indeed, the Fifth Circuit

10. In *Allen*, 512 plaintiffs joined together to assert tort claims in a Mississippi state court against the defendants for damages resulting from an explosion and release of toxic fumes. 63 F.3d at 1329.

specifically noted this salient fact upfront stating "the suit is not a class action. . . ."[11] Based on the court's interpretation of Mississippi law, the court concluded "the unique nature of these awards requires, at least in Mississippi, that the full amount of alleged damages be counted against each plaintiff in determining the jurisdictional amount." *Allen*, 63 F.3d at 1333.

Allen, however, is not the law of the Fifth Circuit with regard to class actions and aggregation of punitive damages, nor is it even the law of the circuit generally. Instead, *Allen* is an anomalous decision based on the peculiarities of Mississippi law. First, in the class action context, the law of the Fifth Circuit pertaining to aggregation of punitive damages to satisfy jurisdictional requirements has been settled since 1978 when a panel of the court decided *Lindsey*. In *Lindsey*, the court considered "the claims of several plaintiffs, suing as members of a class," and relying on *Snyder* and *Zahn*, concluded that the claims, which included punitive damages, could not "be aggregated for the purpose of satisfying this jurisdictional predicate." 576 F.2d at 594. Thus, *Lindsey*, the law of the circuit, is in line with this Court's jurisprudence and the law within all circuits.

Second, the *Allen* panel itself substantially circumscribed the reach of its holding. In response to a Petition for Rehearing and Suggestion for Rehearing En Banc, the *Allen* panel stated:

11. *See also Addison v. Illinois Cent. R.R.*, 967 F. Supp. 173, 176 (E.D. La. 1997) (noting *Allen* did not involve a class action and holding punitive damages may not be aggregated to satisfy the jurisdictional amount-in-controversy).

> The panel is of the unanimous view that the opinion in this case specifically reflects a result under the Mississippi law of punitive damages and is not to be construed as a comment on any similar case that might arise under the law of any other state.

Allen v. R & H Oil & Gas Co., 70 F.3d 26, 26 (5th Cir. 1995). And, approximately three years after the *Allen* decision, a different panel of the Fifth Circuit decided *Ard* and conclusively confirmed that *Allen* was predicated on the peculiar nature of punitive damages under Mississippi law. *Ard*, 138 F.3d at 602. In fact, *Ard* specifically noted that *Allen* departed from *Lindsey*, the law of the circuit, "solely" because of the peculiar nature of Mississippi law. *Ard* continued stating that *Allen* "does not purport to establish a precedent for aggregation of punitive damage claims asserted under federal law or the law of any other state." *Id.* Consequently, *Ard* held that *Lindsey* is still the law of the Fifth Circuit and, like the Ninth Circuit here, refused to permit a class plaintiffs' punitive damage claim to be aggregated for purposes of determining the amount-in-controversy. *Id.*

Petitioners are thus incorrect in their assertion that the Fifth Circuit ever determined that a "class possesses a common and undivided interest in punitive damages" at any time, or that the anomalous *Allen* decision has not been harmonized within the circuit.[12] Furthermore, Petitioners are

12. As this Court recognized in *Davis v. United States*, 417 U.S. 333, 340 (1974), an intracircuit conflict is generally not a sufficient basis for granting certiorari. Indeed, it is the primary task of the court of appeals to reconcile its own internal difficulties. *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) ("doubt about the respect to be accorded to a previous decision of a different panel should not be the occasion for invoking so exceptional a jurisdiction of this Court as that on certification").

also incorrect that the Eleventh Circuit is in conflict with any circuit court of appeals, or that it is in a state of flux about this issue. In *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1076 (11th Cir.) *cert. denied*, 531 U.S. 957 (2000), the Eleventh Circuit resolved a similar short-term intracircuit confusion about *Allen* and *Lindsey*[13] and in the same way.

Today, every circuit court of appeals that has addressed the proper treatment of a class action for punitive damages in the amount-in-controversy determination has reached the same conclusion reached by the Ninth Circuit below: any potential punitive damages award must be divided *pro rata* among class plaintiffs and may not be aggregated to determine the amount in controversy. *See Gilman*, 104 F.3d at 1431 (2d Cir.); *Lindsey*, 576 F.2d 593 (5th Cir.); *H & D Tire & Auto Hardware, Inc. v. Pitney Bowes, Inc.*, 227 F.3d 326, 329-30 (5th Cir. 2000) *cert. denied*, 122 S. Ct. 214 (2001); *Brand Name*, 123 F.3d at 608-09 (7th Cir.); *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1292 (10th Cir. 2001); *Cohen*, 204 F.3d at 1076 (11th Cir.). Thus, because the Second, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh circuits are all in alignment on this issue, because all of these decisions follow the mandate established by this Court in *Snyder* and *Zahn*, and because there is no confusion or countervailing circuit court opinion,[14] there is no need to

13. *Lindsey*, being a pre-split Fifth Circuit opinion, is binding on the Eleventh Circuit. *Bonner v. City of Pritchard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

14. Petitioners attempt to create confusion where none exists by citing to district court opinions in the Sixth Circuit that have decided the issue differently. One opinion *Knauer v. Ohio State Life Ins. Co.*, 102 F. Supp.2d 443 (N.D. Ohio 2000), relied upon authority that is not even good law in the circuits in which the opinions were (Cont'd)

grant the writ or certiorari requested by Petitioners. Indeed, very recently this Court denied a similar request for certiorari to review this exact issue. *See Cohen*, 531 U.S. 957 (2000).

Incredibly, Petitioners argue that because so many circuit courts of appeal have decided this issue in a uniform manner, "further percolation" of this issue is unwarranted. Pet. at 23. The reason review should be denied is not that the issue is novel and thus needs to "percolate" through the courts. Instead, the Court should deny review precisely because the rule in question is a settled one that does not pose a conflict that might otherwise demand resolution.

Petitioners' remaining argument for review on this issue is that the Ninth Circuit's decision is incorrect. However, the alleged incorrectness of a rule of law on which all circuit courts agree does not seem a compelling basis for a grant of certiorari. Nevertheless, Petitioners' contention that the decision is wrong is unpersuasive.

Again, this Court has long held that class members' claims cannot be aggregated to satisfy the jurisdictional amount-in-controversy requirement under the diversity

(Cont'd)
originally issued. In fact, *Knauer* relied upon *Allen* — which, as is explained above, has been subsequently rejected by the Fifth Circuit itself — and the Eleventh Circuit's decision in *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1359 (11th Cir. 1996), which was also immediately abrogated in relevant part by the Eleventh Circuit in *Cohen*, 204 F.3d at 1076. The other opinion cited by Petitioners, *Durant v. Servicemaster Co. Trugreen, Inc.*, 147 F. Supp.2d 744 (E.D. Mich. 2001), relied solely on *Knauer*. Other district courts within the Sixth Circuit now recognize the understandable mistake made by *Knauer*. *See, e.g., Bowers v. Jefferson Pilot Fin. Ins. Co.*, 166 F. Supp.2d 552, 558 (E.D. Mich. 2001).

statute unless the class has "a common and undivided interest" in the claim. *Snyder*, 394 U.S. at 335. Here, plaintiffs brought "separate and distinct" claims. Further, as Judge Posner has explained, punitive damage claims in multi-plaintiff suits are *not* "common and undivided" because "[a] plaintiff's award of punitive damages is not limited by awards made to previous plaintiffs complaining of the same act of the defendant." *Brand Name*, 123 F.3d at 608-09. And, although there might be a constitutional limit to "piling on" punitive damage awards by different courts against a defendant for the same conduct, the constitutional argument is "unlikely to succeed to the point of converting entitlements to punitive damages from individual to collective entitlements." *Id.* at 609. Unless and until one appellate court accepts this novel idea, there is no reason for this Court to address the issue.[15]

15. Petitioners conclude by suggesting that *DaimlerChrsyler v. Gibson*, No. 01-688, presents similar issues to this action. Respondents admit that both cases involve the same or substantially the same punitive damages issue. However, Respondents fail to understand what impact a review of the so-called "1367/*Zahn* issue" could possibly have on this action. Supplemental jurisdiction is not an issue in this case. As noted already, the district court found that Petitioners failed to prove the requisite amount-in-controversy even for one plaintiff, and even under the either viewpoint rule. Pet. App. at 29a. Thus, there is no original jurisdiction upon which the other class members might be brought along. Accordingly, a stay of this action pending resolution of *DaimlerChrysler* is unwarranted.

CONCLUSION

For the foregoing reasons, the Petitioners' request for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A — S. 1712, CLASS ACTION FAIRNESS ACT OF 2001

107th CONGRESS
1st SESSION

§ 1712

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2001

MR. GRASSLEY (for himself, Mr. KOHL, MR. HATCH, MR. CARPER, MR. THURMOND, MR. CHAFEE, and MR. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE. — This Act may be cited as the "Class Action Fairness Act of 2001".

(b) REFERENCE — Whenever in this Act reference is made to an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

(c) TABLE OF CONTENTS. — The table of contents for this Act is as follows:

Sec. 1. Short title; reference; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.

Sec. 4. Federal district court jurisdiction for interstate class actions.

Sec. 5. Removal of interstate class actions to Federal district court.

Sec. 6. Report on class action settlements.

Sec. 7. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS. — Congress finds the following:

(1) Class action lawsuits are an important and valuable part of the legal system when they permit the

fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have —

(A) harmed class members with legitimate claims and defendants that have acted responsibly; and

(B) undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where —

(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

(B) unjustified awards are made to certain plaintiffs at the expense of other class members; and

(C) confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Abuses in class actions undermine the national judicial system and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are —

(A) keeping cases of national importance out of Federal court;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(b) PURPOSES. — The purposes of this Act are to —

(1) assure fair and prompt recoveries for class members with legitimate claims;

(2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

(3) benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) In General. — Part V is amended by inserting after chapter 113 the following:

"CHAPTER 114 — CLASS ACTIONS

"Sec.

"1711. Definitions.

"1712. Judicial scrutiny of coupon and other noncash settlements.

"1713. Protection against loss by class members.

"1714. Protection against discrimination based on geographic location.

"1715. Prohibition on the payment of bounties.

"1716. Clearer and simpler settlement information.

"1717. Notifications to appropriate Federal and State officials.

"§ 1711. Definitions

"In this chapter:

"(1) CLASS.— The term 'class' means all of the class members in a class action.

"(2) CLASS ACTION.— The term 'class action' means any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.

"(3) CLASS COUNSEL.— The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

"(4) CLASS MEMBERS.— The term 'class members' means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

"(5) PLAINTIFF CLASS ACTION.— The term 'plaintiff class action' means a class action in which class members are plaintiffs.

"(6) PROPOSED SETTLEMENT.— The term 'proposed settlement' means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

"§ 1712. Judicial scrutiny of coupon and other noncash settlements

"The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

"§ 1713. Protection against loss by class members

"The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

"§ 1714. Protection against discrimination based on geographic location

"The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

"§ 1715. Prohibition on the payment of bounties

"(a) IN GENERAL.—The court may not approve a proposed settlement that provides for the payment of a greater

share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

"(b) RULE OF CONSTRUCTION.—The limitation in subsection (a) shall not be construed to prohibit a payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling the obligations of that person as a class representative.

"§ 1716. Clearer and simpler settlement information

"(a) PLAIN ENGLISH REQUIREMENTS.—Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain—

"(1) at the beginning of such notice, a statement in 18-point or greater bold type, stating 'LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.';

"(2) a short summary written in plain, easily understood language, describing—

"(A) the subject matter of the class action;

"(B) the members of the class;

"(C) the legal consequences of being a member of the class action;

"(D) if the notice is informing class members of a proposed settlement agreement—

"(i) the benefits that will accrue to the class due to the settlement;

"(ii) the rights that class members will lose or waive through the settlement;

"(iii) obligations that will be imposed on the defendants by the settlement;

"(iv) the dollar amount of any attorney's fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney's fee class counsel will be seeking; and

"(v) an explanation of how any attorney's fee will be calculated and funded; and

"(E) any other material matter.

"(b) TABULAR FORMAT.—Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)—

"(1) be placed in a conspicuous and prominent location on the notice;

"(2) contain clear and concise headings for each item of information; and

"(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

"(c) TELEVISION OR RADIO NOTICE.—Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from a class action or a proposed settlement, if such right exists, shall, in plain, easily understood language—

"(1) describe the persons who may potentially become class members in the class action; and

"(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person's inclusion in the class action.

"§ 1717. Notifications to appropriate Federal and State officials

(a) DEFINITIONS—

"(1) APPROPRIATE FEDERAL OFFICIAL- In this section, the term 'appropriate Federal official' means—

"(A) the Attorney General of the United States; or

"(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

"(2) APPROPRIATE STATE OFFICIAL- In this section, the term 'appropriate State official' means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

"(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

"(2) notice of any scheduled judicial hearing in the class action;

"(3) any proposed or final notification to class members of—

(A)(i) the members' rights to request exclusion from the class action; or

"(ii) if no right to request exclusion exists, a statement that no such right exists; and

"(B) a proposed settlement of a class action;

"(4) any proposed or final class action settlement;

"(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

(6) any final judgment or notice of dismissal;

(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or

"(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

"(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

"(1) FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

"(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined

in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

"(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

"(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

"(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member demonstrates that the notice required under subsection (b) has not been provided.

"(2) LIMITATION. A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

"(3) APPLICATION OF RIGHTS.— The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

"114. Class Actions ..... 1711".

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION FOR INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d)(1) In this subsection—

"(A) the term 'class' means all of the class members in a class action;

Appendix A

"(B) the term 'class action' means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

"(C) the term 'class certification order' means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

"(D) the term 'class members' means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

"(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interest and costs, and is a class action in which—

"(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

"(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

"(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

"(3) Paragraph (2) shall not apply to any civil action in which—

Appendix A

"(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

"(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

"(C) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

"(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interest and costs.

"(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

"(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the prerequisites of rule 23 of the

"(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

"(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

(7) Paragraph (2) shall not apply to any class action that solely involves a claim—

"(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

"(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

"(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).

"(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

"(9)(A) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) shall nevertheless be deemed a class action if—

"(i) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

"(ii) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

"(B)(i) In any civil action described under subparagraph (A)(ii), the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members.

"(ii) Paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to any civil action described under subparagraph (A)(i).

"(iii) Paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to any civil action described under subparagraph (A)(ii).".

(b) CONFORMING AMENDMENTS.—

(1) Section 1335 (a)(1) is amended by inserting "(a) or (d)" after "1332".

(2) Section 1603 (b)(3) is amended by striking "(d)" and inserting "(e)".

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

"§ 1453. Removal of class actions

"(a) DEFINITIONS.—In this section, the terms 'class', 'class action', 'class certification order', and 'class member' shall have the meanings given such terms under section 1332(d)(1).

"(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

"(1) by any defendant without the consent of all defendants; or

"(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

"(c) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of a class certification order in the action.

"(d) PROCEDURE FOR REMOVAL.—Section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.

"(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.

"(f) EXCEPTION.—This section shall not apply to any class action that solely involves—

"(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

"(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

"(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).".

(b) REMOVAL LIMITATION.—Section 1446(b) is amended in the second sentence by inserting "(a)" after "section 1332".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

"§ 1453. Removal of class actions.".

SEC. 6. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on class action settlements.

(b) CONTENT.—The report under subsection (a) shall contain—

(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit;

(2) recommendations on the best practices that courts can use to ensure that—

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.

(c) AUTHORITY OF FEDERAL COURTS.—Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorneys' fees.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.

APPENDIX B — H.R. 2341, CLASS ACTION FAIRNESS ACT OF 2001

107th CONGRESS

1st SESSION

H. R. 2341

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June 27, 2001

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, Mr. MORAN of Virginia, Mr. ARMEY, Mr. STENHOLM, Mr. HYDE, Mr. DOOLEY of California, Mr. BRYANT, Mr. HOLDEN, Mr. COX, Mr. CHABOT, Mr. CRAMER, Mr. OXLEY, Mr. SUNUNU, Mr. BACHUS, Mr. BARTLETT of Maryland, and Mr. GOSS) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Class Action Fairness Act of 2001".

(b) REFERENCE.—Whenever in this Act reference is made to an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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Sec. 1. Short title; reference; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.

Sec. 4. Federal district court jurisdiction of interstate class actions.

Sec. 5. Removal of interstate class actions to Federal district court.

Sec. 6. Appeals of class action certification orders.

Sec. 7. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) Class action lawsuits are an important and valuable part of our legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have harmed class members with legitimate claims and defendants that have acted responsibly, and that have thereby undermined public respect for our judicial system.

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(3) Class members have been harmed by a number of actions taken by plaintiffs' lawyers, which provide little or no benefit to class members as a whole, including—

(A) plaintiffs' lawyers receiving large fees, while class members are left with coupons or other awards of little or no value;

(B) unjustified rewardsbeing made to certain plaintiffs at the expense of other class members; and

(C) the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where—

(A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;

(B) less scrutiny may be given to the merits of the case; and

(C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.

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(5) These abuses undermine our Federal system and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are—

(A) handling interstate class actions that affect parties from many States;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay forforced settlements and excessive judgments.

(b) PURPOSES.—The purposes of this Act are—

(1) to assure fair and prompt recoveries for class members with legitimate claims;

(2) to protect responsible companies and other institutions against interstate class actions in State courts;

(3) to restore the intent of the framers of the Constitution by providing for Federal court consideration of interstate class actions; and

(4) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

"CHAPTER 114—CLASS ACTIONS

"Sec.

"1711. Judicial scrutiny of coupon and other noncash settlements.

"1712. Protection against loss by class members.

"1713. Protection against discrimination based on geographic location.

"1714. Prohibition on the payment of bounties.

"1715. Clearer and simpler settlement information.

"1716. Pleading requirements for class actions.

"1717. Definitions

"§ 1711. Judicial scrutiny of coupon and other noncash settlements

"The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

"§ 1712. Protection against loss by class members

"The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

"§ 1713. Protection against discrimination based on geographic location

"The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

"§ 1714. Prohibition on the payment of bounties

"(a) IN GENERAL.—The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf

of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

"(b) RULE OF CONSTRUCTION.—The limitation in subsection (a) shall not be construed to prohibit any payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling his or her obligations as a class representative.

"§ 1715. Clearer and simpler settlement information

"(a) PLAIN ENGLISH REQUIREMENTS.—Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain—

"(1) at the beginning of such notice, a statement in 18-point Times New Roman type or other functionally similar type, stating 'LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.';

"(2) a short summary written in plain, easily understood language, describing—

"(A) the subject matter of the class action;

"(B) the members of the class;

"(C) the legal consequences of being a member of the class;

"(D) if the notice is informing class members of a proposed settlement agreement—

"(i) the benefits that will accrue to the class due to the settlement;

"(ii) the rights that class members will lose or waive through the settlement;

"(iii) obligations that will be imposed on the defendants by the settlement;

"(iv) the dollar amount of any attorney's fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney's fee class counsel will be seeking; and

"(v) an explanation of how any attorney's fee will be calculated and funded; and

"(E) any other material matter.

"(b) TABULAR FORMAT.—Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)—

"(1) be placed in a conspicuous and prominent location on the notice;

"(2) contain clear and concise headings for each item of information; and

"(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

"(c) TELEVISION OR RADIO NOTICE.—Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language—

"(1) describe the persons who may potentially become class members in the class action; and

"(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person's inclusion in the class action or settlement.

"§ 1716. Pleading requirements for class actions

"(a) PARTICULARITY.—In each class action, the complaint shall specify with particularity the nature and amount of all relief sought on behalf of any class member, and the nature of the injury allegedly caused to members of the class.

"(b) STATE OF MIND.—In any class action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or failure to act alleged to give rise to liability, state with particularity facts which, if proven, will demonstrate that the defendant acted with the required state of mind.

"(c) MOTION TO DISMISS.—STAY OF DISCOVERY—

"(1) DISMISSAL FOR FAILURE TO MEET PLEADING REQUIREMENTS.—In any class action, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of subsections (a) or (b) are not met.

"(2) STAY OF DISCOVERY.—In any class action, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss or motion for judgment on the pleadings, unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

"§ 1717. Definitions

"In this chapter—

"(1) CLASS ACTION.—The term 'class action' means any civil action filed in a district court of the United States pursuant to rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed

to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class.

"(2) CLASS COUNSEL.—The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

"(3) CLASS MEMBERS.—The term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

"(4) PLAINTIFF CLASS ACTION.—The term 'plaintiff class action' means a class action in which class members are plaintiffs.

"(5) PROPOSED SETTLEMENT.—The term 'proposed settlement' means an agreement that resolves claims in a class action, that is subject to court approval and that, if approved, would be binding on the class members.'.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

"114. Class Actions ..... 1711.".

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d)(1) In this subsection—

"(A) the term 'class' means all of the class members in a class action;

"(B) the term 'class action' means any civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons on behalf of a class;

"(C) the term 'class certification order' means an order issued by a court approving the treatment of a civil action as a class action; and

"(D) the term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

"(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interest and costs, and is a class action in which—

"(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

"(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

"(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

"(3) Paragraph (2) shall not apply to any civil action in which—

"(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

"(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

"(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

"(C) the number of proposed plaintiff class members is less than 100.

"(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interest and costs.

"(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

"(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the requirements of rule 23 of the Federal Rules of Civil Procedure.

"(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

"(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

(7) Paragraph (2) shall not apply to any class action brought by shareholders that solely involves a claim that relates to—

"(A) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 193 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

"(B) the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

"(C) the rights, duties (including fiduciary duties), and obligations relating to or created by

or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).

"(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

"(9) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) of this subsection shall nevertheless be deemed a class action if—

"(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

"(B) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

In any such case, the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims

of individual class members. The provisions of paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (A). The provisions of paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (B).'.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting "(a) or (d)" after "1332".

(2) Section 1603(b)(3) is amended by striking "(d)" and inserting "(e)".

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

"§ 1453. Removal of class actions

"(a) DEFINITIONS.—In this section, the terms 'class', 'class action', 'class certification order', and 'class member' have the meanings given these terms in section 1332(d)(1).

"(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

"(1) by any defendant without the consent of all defendants; or

"(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

"(c) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of a class certification order in the action.

"(d) PROCEDURE FOR REMOVAL.—The provisions of section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.

"(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS.—The provisions of section 1447 shall apply to any removal of a case under this section, except that, notwithstanding the provisions of section 1447(d), an order remanding a classaction to the State court from which it was removed shall be reviewable by appeal or otherwise.

"(f) EXCEPTION.—This section shall not apply to any class action brought by shareholders that solely involves—

"(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

"(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporatedor organized; or

"(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).'.

(b) REMOVAL LIMITATION.—Section 1446(b) is amended in the second sentence by inserting "(a)" after "section 1332".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

"§ 1453. Removal of class actions.".

SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

(a) IN GENERAL.—Section 1292(a) is amended by inserting after paragraph (3) the following:

"(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.'.

(b) DISCOVERY STAY.—All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.